

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DOUG BINTZLER,	:	APPEAL NO. C-130757
	:	TRIAL NO. A-1207614
and	:	
MICHAEL JORDAN,	:	<i>JUDGMENT ENTRY.</i>
	:	
Plaintiffs-Appellants,	:	
	:	
vs.	:	
	:	
BOARD OF TRUSTEES OF THE	:	
UNIVERSITY OF CINCINNATI,	:	
	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiffs-appellants Doug Bintzler and Michael Jordan challenge the Hamilton County Common Pleas Court's dismissal of their complaint seeking money damages for wrongful discharge by their former employer, defendant-appellee the Board of Trustees of the University of Cincinnati.

Bintzler and Jordan worked at the University of Cincinnati's DNA Core Facility, a center providing services to researchers receiving federal grants to fund their research. Beginning in 2002, Bintzler and Jordan discovered what they believed to be fraudulent billing and accounting practices in violation of federal regulations. They reported the matter to their superiors. Rather than acting on their suspicions, they stated that the university ignored their allegations and ultimately retaliated against them.

Almost six years after their first allegation, Bintzler's and Jordan's employment with the University of Cincinnati ended when the facility closed on January 31, 2008. In May 2008, believing that they had been dismissed because they had uncovered the misuse of federal funds, Bintzler and Jordan filed a qui tam lawsuit in the United States District Court alleging that the university had violated the federal False Claims Act. The federal court dismissed Bintzler's and Jordan's claim in October 2011. On September 27, 2012, more than four and one-half years after being terminated, Bintzler and Jordan brought this action for wrongful discharge under Ohio's common law, seeking back pay, and compensatory and punitive damages.

The University of Cincinnati moved to dismiss the complaint under both Civ.R. 12(B)(1) and 12(B)(6), arguing that the common pleas court lacked subject-matter jurisdiction over claims for money damages against the university, and that Bintzler and Jordan had failed to state a claim on which relief could be granted because they had filed their complaint more than four years after their discharge, beyond the applicable statute of limitations.

Bintzler and Jordan responded that their federal qui tam action had tolled the statute of limitations on their state wrongful-discharge claim. *But see In re Vertrue Marketing & Sales Practices Litigation*, 712 F.Supp.2d 703, 722 (N.D.Ohio 2010), citing *Rester v. McWane*, 962 So.2d 183, 187 (Ala.2007) (holding that the federal False Claims Act does not toll the statute of limitations for state-law claims not asserted in a federal action). They also alleged in their reply memorandum, for the first time, that the university had engaged in retaliatory discharge of state employees for reporting the misuse of public resources, in contravention of R.C. 124.341.

The trial court declined to rule on the motion initially and ordered discovery to continue. Finally, on October 9, 2013, the trial court dismissed the complaint stating that

it was without subject-matter jurisdiction to hear the case, “as the Court of Claims has exclusive jurisdiction.”

In their sole assignment of error, Bintzler and Jordan argue that the trial court erred in dismissing the complaint. We review the trial court’s grant of dismissal *de novo*. *See Dikong v. Ohio Supports, Inc.*, 2013-Ohio-33, 985 N.E.2d 949, ¶ 9 (1st Dist.). Subject-matter jurisdiction is the power conferred on a court to adjudicate a particular matter on its merits and to render a valid judgment in the action. *See Cheap Escape Co. v. Haddox, L.L.C.*, 120 Ohio St.3d 493, 2008-Ohio-6323, 900 N.E.2d 601, ¶ 6; *see also In re T.J.B.*, 1st Dist. Hamilton No. C-130725, 2014-Ohio-2028, ¶ 6. Thus we will affirm the trial court’s dismissal if we determine that no cause of action cognizable by the trial court was raised in the complaint. *See State ex rel. Bush v. Spurlock*, 42 Ohio St.3d 77, 80, 537 N.E.2d 641 (1989).

A civil suit filed against the University of Cincinnati is essentially a suit against the state of Ohio. *See McIntosh v. Univ. of Cincinnati*, 24 Ohio App.3d 116, 118, 493 N.E.2d 321 (1st Dist.1985). The General Assembly has granted the Court of Claims “original” and “exclusive jurisdiction over all civil actions against the state.” R.C. 2943.03(A)(1). Thus a common pleas court lacks subject-matter jurisdiction over civil claims for money damages against the University of Cincinnati. *See McIntosh* at 118; *see also Manning v. Ohio State Library Bd.*, 62 Ohio St.3d 24, 577 N.E.2d 650 (1991), paragraph two of the syllabus; *Bla-Con Industries v. Miami Univ.*, 12th Dist. Butler No. CA2006-06-127, 2007-Ohio-785, ¶ 12.

Moreover, while R.C. 124.341 prohibits retaliatory action against a state employee for reporting violations of state law or the misuse of public resources, R.C. 124.341(D) expressly provides that jurisdiction over any claim arising under the statute is limited to an appeal in the state personnel board of review. Since Bintzler’s and Jordan’s

common-law and statutory claims against the University of Cincinnati are not cognizable by the common pleas court, dismissal, pursuant to Civ.R. 12(B)(1), was proper. The assignment of error is overruled.

Therefore, the trial court's entry of dismissal is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., DINKELACKER and FISCHER, JJ.

To the clerk:

Enter upon the journal of the court on December 3, 2014
per order of the court _____.

Presiding Judge